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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 327

NICHOLAS MAMULA, *Appellant*,

v.

UNITED STEELWORKERS OF AMERICA, *et al.*

ON APPEAL FROM THE SUPREME COURT OF PENNSYLVANIA

MOTION TO DISMISS

Pursuant to Rule 16 of the Rules of this Court, appellees respectfully move that the above-entitled appeal be dismissed, and that, treating the papers as an application for a writ of certiorari, the writ be denied.

STATEMENT

Appellant Nicholas Mamula was, until the events described herein, the President of Local Union 1211, United Steelworkers of America. During Mamula's tenure as President, a member of his local filed charges alleging that Mamula had committed a number of violations of the union's Constitution. These charges were heard by a Trial Committee elected by the local union, which found Mamula guilty of twelve specific acts of misconduct. The local union membership voted to remove him from office, to fine

him $2,000, and to suspend him from membership until the fine was paid (R. 63).

Mamula appealed the action of his local union to the International Executive Board of the United Steelworkers of America, which rendered its decision on January 20, 1962. The Board reversed six of the findings of misconduct, but affirmed six others. Those affirmed were as follows:

(1) Allowing and condoning a wildcat strike;

(2) Refusal to stop operating a bingo game, illegal under state law and contrary to the policy of the International Union, despite repeated warnings and orders from the International to cease;

(3) Illegal absence and expenditures;

(4) Unauthorized appointment of "watchers" at a local union election, at great expense to the union;

(5) Instructing Chairman of Athletic and Recreational Committee to continue maintenance of separate fund, despite International policy and orders that all funds of the local union be consolidated within the control of the financial officers.

(6) Interfering with duties of Staff Representative and entering into unauthorized secret agreement with management without consulting other persons whose consent was required.[1]

On the basis of its findings, the Board reversed the fine and suspension from membership, but determined that Mamula would be disqualified from holding further office in the union until July 20, 1966, and until he restored to the

[1] The present action is the second brought by appellant seeking to set aside the action of the union. The specific violations found by the International Executive Board do not appear in the record in the court below but are set forth in the record of the prior litigation between the same parties, *Mamula* v. *Local 1211, United Steelworkers of America*, 205 F. Supp. 915 (W.D.Pa. 1962).

union $1,081 wasted by his acts of misconduct (R. 63-64).[2]

The union's Constitution provides for appeals of the International Executive Board's decisions to the International Convention, which was scheduled to meet, and did meet, in September, 1962 (R. 93). Mamula, however, did not file an appeal to the Convention (R. 35).

Instead, Mamula turned to the courts. He first sued in federal district court in Pittsburgh, claiming that the union's action had violated the Labor-Management Reporting and Disclosure Act ("LMRDA") 29 U.S.C. §§401 et. seq. That complaint was dismissed for failure to state a claim upon which relief could be granted. *Mamula* v. *Local 1211, United Steelworkers of America,* 205 F. Supp. 915 (W.D. Pa. 1962).

Mamula did not appeal this dismissal. Instead, he instituted the present action in the Court of Common Pleas of Allegheny County, Pennsylvania. His amended complaint, which was filed in January, 1963, charged that the union had violated the common law of Pennsylvania in the conduct of his trial (R. 24-40). Defendants filed an answer denying the charges (R. 41-55), and a motion for judgment on the pleadings on the ground, *inter alia,* that, as the complaint admitted (R. 35), Mamula had not exhausted his remedies within the union (R. 60). The trial court granted this motion, and dismissed the complaint, holding that Mamula, by not appealing the International Executive Board's ruling to the International Convention, had failed

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[2] The record in the court below consisted solely of the complaint, the answer, and the motion for judgment on the pleadings. Appellant, however, includes in his jurisdictional statement a lengthy indictment of the union (pp. 3-7), none of which is supported by the record, and all of which is either false or misleading. We will not burden this Court with still additional information outside the record in refutation of these allegations. We have felt it necessary to interject this comment, however, lest this Court otherwise construe our silence as a tacit acknowledgment that there might be some truth to appellant's baseless charges.

to exhaust his internal union remedies, (R. 61-69, J.S. 36-42).

On appeal, the Supreme Court of Pennsylvania affirmed (R. 96-103, J.S. 18-26). The Court's opinion, per Justice Cohen, explained that there were no circumstances alleged in this case which, under Pennsylvania law, would justify Mamula's failure to exhaust his internal remedies before seeking relief in the courts.

> "Appellant argues that the exhaustion rule is . . . inapplicable because it would have been unreasonably burdensome for him to appeal to the International Convention in view of the eight-month delay between the decision of the Executive Board (January, 1962) and the meeting of the Convention (September, 1962) . . . [It is not] possible to set forth for all situations a time limit beyond which exhaustion of internal remedies will not be demanded. Rather, an examination must be made of the special factors in each case, especially the possible prejudice to the grievant members from the delay in internal appellate procedures.
>
> "Applying this test to the instant case, we find that here the eight-month time period was not unreasonably burdensome" (R. 99-100, J.S. 21-22).

Mamula had contended, *inter alia*, that Section 101(a)(4) of the LMRDA, 29 U.S.C. §411 (a)(4), forbids state courts, in actions under state law, from requiring the pursuit of internal remedies for more than four months. Section 101(a)(4) provides in pertinent part as follows:

> "No labor organization shall limit the right of any member thereof to institute an action in any court, or in a proceeding before any administrative agency . . . Provided, That any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) within such organization, before instituting legal or administrative pro-

ceedings against such organizations or any officer thereof. . . ."

The court rejected Mamula's contention, holding that Section 101(a)(4) does not disturb the power of state courts to withhold jurisdiction pending pursuit of internal remedies for whatever period they deem appropriate. It reasoned as follows:

> "We read Section 101(a)(4) as a limitation upon labor organizations and not upon the judiciary. Prior to the passage of the Landrum-Griffin Act, many unions had provisions in their constitutions stating that any member who brought suit against the union without first exhausting all available internal remedies—no matter how burdensome or time-consuming—was subject to expulsion from membership. Congress' purpose in enacting Section 101(a)(4) was to invalidate such provisions, thereby protecting the union member from discipline for violation thereof, where insistence on exhaustion of remedies would be either (1) unreasonable or (2) exceed a four-month time period. Congress did not intend to alter state rules relating to exhaustion of remedies which, as we have seen, are designed to aid the courts as well as the unincorporated association. Thus while appellant could not be disciplined for bringing suit before appealing to the International Convention, the failure to exhaust this internal remedy still precludes resort to our courts.
>
> "An examination of the language of Section 101(a)(4) plainly supports this interpretation. In the first place, the section states that '[n]o labor organization' shall limit the right of any member to institute suit or to take other remedial steps. There is no reference to existing judicial limitations on the ability of members of unincorporated associations to maintain action against the association. In this connection it should

be remembered that the Landrum-Griffin Act was designed to promote union democracy by protecting the rights of a union member vis-a-vis his union. In fact, Title I, of which Section 101(a)(4) is a part, is labeled the 'Bill of Rights of Members of Labor Organizations' and sets forth various restrictions upon labor organizations.

"Secondly, the language relied upon by appellant appears in a parenthetical clause contained in a proviso to the restrictions imposed upon labor organizations. It is highly unlikely that Congress would attempt in such a cavalier manner to alter established state court rules relating to exhaustion of internal remedies" (R. 101-02, J.S. 24-25).

Justice Roberts dissented, in an opinion joined by Chief Justice Bell (R. 104-05, J.S. 27-29). He argued that, as a matter of state law, members should not be required to appeal to conventions, since conventions are not tribunals conducive to fair hearings. Turning to Section 101(a)(4), the dissent acknowledged that "This section obviously does not alter the established substantive rule of this Commonwealth which requires exhaustion of internal union remedies." Nonetheless, the dissent thought that the union's constitution transgressed Section 101(a)(4), which the dissent read as forbidding any labor organization to "delay the availability of such internal remedies for more than four months." (R. 105, J.S. 28).

Justice Jones dissented without opinion (R. 103, J.S. 26).

ARGUMENT

1. The appellate jurisdiction of this court does not extend to this action. The decision below does not declare any statute of the United States invalid, nor does it uphold the validity of any state statute in the face of a constitutional attack. 28 U.S.C. §§1257(1), (2). Accordingly, the appeal must be dismissed.

2. Treating the papers as an application for a writ of certiorari, the writ should be denied. The federal claim presented is patently frivolous, and was properly disposed of by the court below.

This is *not* a suit under the LMRDA, or under any other federal statute. Indeed, appellant's earlier suit in federal court was dismissed for failure to state a claim under federal law. *Mamula* v. *Local 1211, United Steelworkers*, 205 F. Supp. 915 (W.D.Pa. 1962). That decision was not appealed, and is a final determination of appellant's rights under federal law. The decision, moreover, is in accord with all the reported decisions on the question.[3]

This is, rather, a suit in state court grounded exclusively in state law. Many state courts have refrained from deciding internal union disputes until the parties have exhausted their remedies within the union. Appellant contends, however, that Congress, though it did not see fit in the LMRDA to regulate the conduct challenged here, nonetheless intended by Section 101(a)(4) to deprive state courts of their discretion to determine whether and when to entertain actions challenging such conduct under state law. According to appellant, state courts are now *compelled* to hear such cases once internal union remedies have been pursued for four months.

This contention—which would mark an extraordinary innovation in federal-state relations—is frivolous. The legislative history of Section 101(a)(4) is devoid of any suggestion that Congress meant to override state procedural requirements in state law actions. Indeed, to the contrary, those legislators who adverted to the question were explicit that Section 101(a)(4) was not to affect in any way state requirements of exhaustion of remedies.

Thus Senator Kennedy, the leading Senate conferee on the Act, said:

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[3] See e.g., the decisions cited in the district court's opinion, and *Hamilton* v. *Gunzan*, 199 F. Supp. 562 (S.D.N.Y. 1961).

> "Nor is it the intent or purpose of the provision to invalidate the considerable body of State and Federal Court decisions of many years' standing which require, or do not require, the exhaustion of internal remedies prior to Court intervention depending upon the reasonableness of such requirements in terms of the facts and circumstances of a particular case. So long as the union member is not prevented *by his union* from resorting to the Courts, the intent and purpose of the 'right to sue' provision is fulfilled, and any requirements which *the Court* may then impose in terms of pursuing reasonable remedies within the organization to redress violation of his union constitutional rights will not conflict with the statute." (105 Cong. Rec. 17899 (1959)) (emphasis supplied).

In the House, Congressman O'Hara made the same point:

> "It should be remembered that we are not, in [Section 101(a)(4)], giving union members the right to sue. They now possess that right under the common law of the States or not at all. We can only provide that *unions* shall not impair the right. *This does not affect the doctrine of exhaustion of remedies as applied by State courts and the States will continue to apply their own independent judgment on this matter.*" (105 Cong. Rec. 15689-90 (1959)) (emphasis supplied).[4]

Nor is it credible, in an area as sensitive and politically-charged as that of federal-state relations, that Congress, in the face of these statements, might have *sub silentio* shackled state courts in the conduct of exclusively state business. "It seems unlikely that Congress would so lightly sweep aside state rules of judicial administration." Cox, *Internal Affairs*

[4] See also "Analysis of the Labor-Reform Bill" by Representatives Thompson and Udall, 105 Cong. Rec. 15538-39 (1959): "the doctrine is one of State law and apparently is not affected by the statute."

of Labor Unions Under the Labor Reform Act of 1959, 58 Mich. L.Rev. 819, 840 (1960).[5] As the court below put it, "It is highly unlikely that Congress would attempt in such a cavalier manner to alter established state court rules relating to exhaustion of internal remedies" (R. 102, J.S. 25). And in the nearly five years since passage of the LMRDA not one state court has felt compelled by Section 101(a)(4) to modify its equitable exhaustion rule.[6]

Indeed, since Section 101(a)(4) is merely a restraint on the imposition of discipline by labor unions, and is not a limitation addressed to any courts, it would appear that even in suits under the LMRDA the federal courts retain their discretion to require pursuit of internal remedies beyond four months. See remarks of Senator Kennedy, *supra*; Cox, *supra*, 58 Mich. L. Rev. at 839-41; Hickey, *"The Bill of Rights of Union Members"* 48 Geo. L. J. 226, 254 (1959); Smith, *The Labor-Management Reporting and Disclosure Act of 1959*, 46 Va. L. Rev. 195, 206-07 (1960).

The jurisdictional statement, at pp. 15-16, lists four decisions which are alleged to be "contrary to and in direct conflict with" the decision below.[7] Manifestly, since all of these decisions are in suits in federal court to enforce rights granted by LMRDA, they could not conflict with the holding of the court below that Section 101(a)(4) does not af-

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[5] Appellant cites this article at page 12 of the jurisdictional statement, but misstates the position taken in the article.

[6] In *Kopke* v. *Rannev*, 16 Wisc. 2d 369, 114 N.W. 2d 485 (1962 cited at page 12 of the jurisdictional statement, the Supreme Court of Wisconsin referred to Section 101(a)(4) in a general discussion of the law on exhaustion of remedies, but there was no holding (as suggested by appellant) that that section "controls" state actions.

[7] *Sheridan* v. *United Bhd. of Carpenters*, 306 F. 2d 152 (3d Cir. 1962); *Parks* v. *Int'l Bhd. of Elec. Workers*, 314 F. 2d 886, 925 (4th Cir.), *cert. denied*, 372 U. S. 976 (1953). *Detroy* v. *American Guild of Variety Artists*, 286 F. 2d 75 (2d Cir.), *cert. denied* 366 U. S. 929 (1961), *Harris* v. *Int'l Longshoremen's Assn.*, 321 F. 2d 801, 805 (3d Cir. 1963).

fect the exhaustion of remedies requirements imposed by *state* courts in suits brought to enforce *state* law. Moreover, the discussions in these cases are *dicta* and, though not entirely clear, do not appear to view Section 101(a)(4) as *compelling* federal courts to entertain LMRDA actions after four months. Rather, the court below read them "as merely adopting for the federal courts an exhaustion of remedies rule *patterned upon* the proviso clause in Section 101(a)(4). Those cases do not mean that state courts must also adopt this exhaustion rule" (R. 103, J.S. 26; emphasis supplied).

CONCLUSION

For the reasons set forth above, the appeal must be dismissed for lack of jurisdiction, and, treating the papers as an application for a writ of certiorari, the writ should be denied.

Respectfully submitted,

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